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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,040	11/17/2003	Donald G. Wheatley	1584-003	3219

26824 7590 07/25/2005

ALEX RHODES  
UNIT NO. 9  
50168 PONTIAC TRAIL  
WIXOM, MI 48393

EXAMINER

GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/714,040	WHEATLEY, DONALD G.	
	Examiner	Art Unit	
	Stephen Gordon	3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11-14 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. Claims 1-2 and 11-14, as newly presented, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1, the claim as newly presented is very confusing as multiple tubes including a cylindrical tube and a cylindrical thin walled tube are recited. Such defines new matter as nowhere in the originally filed papers is a configuration defining multiple tubes with brackets including a circular thin walled portion defined. Moreover, it is not at all clear how such a device would be configured.

Newly claim 11, the claim as newly presented is very confusing as multiple tubes including a cylindrical tube and a cylindrical thin walled tube are recited. Such defines new matter as nowhere in the originally filed papers is a configuration defining multiple tubes with brackets including a circular thin walled portion defined. Moreover, it is not at all clear how such a device would be configured.

Newly added claim 12, the recitation in the last line defining a screw threadably engaging the upper circular wall portion is very confusing as no screw per se as defined in the originally presented papers functions or is positioned in such a manner. Such recitation then is deemed to define new matter. Additionally note, threaded fasteners of

the disclosed invention include elements 35 and 28. Neither of these elements is positioned or functions as recited in claim 12 - note figures 3 and 4.

2. Claims 1-2 and 11-14, as newly presented, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, the claim as newly presented is very confusing as a configuration including multiple tubes is not consistent with the originally disclosed invention as discussed above regarding the 112-first paragraph rejection. Additionally, it is not clear how such a device would be configured. Moreover, as multiple tubes are recited, the term "said tube" used throughout the claim lacks clear antecedent basis.

New claim 11, the claim is very confusing as a configuration including multiple tubes is not consistent with the originally disclosed invention as discussed above regarding the 112-first paragraph rejection. Additionally, it is not clear how such a device would be configured. Moreover, as multiple tubes are recited, the term "said tube" at the end of the claim lacks clear antecedent basis - note similar confusing terms additionally appear in claim 12. Finally note, "a vehicle" in line 3 should be ~~—said vehicle—~~for added clarity (note terms "a vehicle" in the preamble and "said vehicle" in each of claims 13 and 14).

With additional regard to new claim 12, the claim is very confusing as a configuration including a screw threadably engaging the circular wall portion is not consistent with the originally disclosed invention as discussed above regarding the 112-first paragraph rejection. Additionally, it is not clear how such a device would be configured.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 3-6, as newly presented, are rejected under 35 U.S.C. 102(b) as being anticipated by Ragsdale.

Ragsdale teaches a vehicle cargo tie rail including a cylindrical tube 30 and a pair of single piece uniform cross section brackets 24 as newly broadly recited.

Regarding claim 3 as newly amended, the brackets 24 are capable of sliding along the tube and rotating around an axis of the tube as broadly claimed. At least elements 28,32+ define means for fixing as broadly claimed. Finally it should be noted, in the newly presented instant claim 3, applicant has chosen to define a *single piece* (i.e. element 26 and/or element 27 of the instant invention) of the bracket assembly as the recited "bracket". The single piece element 24 of the bracket assembly of Ragsdale clearly defines a single piece of uniform cross section. In as much as the instant

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invention elements 26 and/or 27 of the bracket assembly can be considered to define as single piece bracket, element 24 of Ragsdale is fairly readable on such a bracket.

Claim 5, Ragsdale teaches use on a van – see section 4, line 18.

Claim 6, Ragsdale is clearly capable of being used on a station wagon. To the extent that the wagon per se is not a positively recited element of the instant claimed apparatus (i.e. it is a further definition of the intended use recitation of the base claim preamble), the functional language relating thereto is given little patentable weight. It should additionally be noted that Ragsdale teaches that the rail can be used on vehicles other than a pickup truck – see section 4, lines 18-19.

5. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

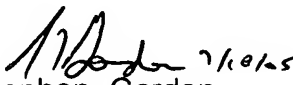
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen Gordon  
Primary Examiner  
Art Unit 3612

stg